

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

A.B., a minor child, by and through her)
Parent and Legal Guardian, SHERRI)
BLAIK,)
)
Plaintiff,)
)
v.)
)
HEALTH CARE SERVICE)
CORPORATION d/b/a/ BLUE CROSS)
BLUE SHIELD OF OKLAHOMA,)
)
Defendant.)

Case No. CIV-19-968-D

ORDER

Before the Court is Plaintiff's Motion to Strike Lead Trial Counsel from Defendant's Witness List [Doc. No. 135]. Upon consideration, the Court finds that the Motion is premature.

In effect, Plaintiff asks for an advisory ruling on whether Defendant can call her lead counsel, Mark Engel, as a trial witness. Rule 3.7(a) of the Oklahoma Rules of Professional Conduct – adopted by LCvR83.6(b) – prohibits an attorney from acting as an advocate in a trial where the attorney is likely to be a necessary witness. *See* Okla. Stat. tit. 5, ch. 1, app. 3-A. Under this rule, “an advocate should be called as a witness only in circumstances of the utmost necessity.” *See Boyd v. State*, 1992 OK CR 40, ¶ 21, 839 P.2d 1363, 1370. Presently in this case, it is unknown whether an issue under the advocate-witness rule will arise or require a ruling. The issue will be presented for decision only if a trial is needed, the facts of which Mr. Engel has percipient knowledge are disputed, and

there are no other means of evidentiary presentation. *See Morganroth & Morganroth v. DeLorean*, 213 F.3d 1301, 1309 (10th Cir. 2000), *overruled on other grounds by TW Telecom Holdings, Inc. v. Carolina Internet Ltd.*, 661 F.3d 495 (10th Cir. 2011) (finding Rule 3.7 motion premature); *see also Bell v. City of Okla. City*, Case No. CIV-16-1084-D, 2017 WL 3219489, *2 (W.D. Okla. July 28, 2017) (narrowly defining “necessary witness”).

IT IS THEREFORE ORDERED that Plaintiff’s Motion to Strike Lead Trial Counsel from Defendant’s Witness List [Doc. No. 135] is **DENIED** without prejudice to a future submission, if appropriate.

IT IS SO ORDERED this 22nd day of June, 2023.



TIMOTHY D. DeGIUSTI
Chief United States District Judge